ORANG-ORANG YANG MENDUDUKI RUMAH DAN SETOR-SETOR PAPAN YANG DIDIRIKAN ATAS SEBAHAGIAN TANAH YANG TERKANDUNG DI BAWAH HAKMILIK GERAN NO 26977 BAGI LOT 4271 DALAM BANDAR JOHOR BAHRU, JOHOR

v.

PUNCA KLASIK SDN BHD & OTHER APPEALS

COURT OF APPEAL, KUALA LUMPUR
SHAIK DAUD ISMAIL JCA
AHMAD FAIRUZ JCA
MOKHTAR SIDIN JCA
[CIVIL APPEAL NO: J-02-487 OF 1995]
27 JUNE 1997

CIVIL PROCEDURE: *Locus standi - Land law - Unnamed person in occupation of land - Whether must apply to be joined as defendant - Rules of the High Court 1980, O. 89 r. 5*

The respondent became the registered proprietor of the land comprised under Grant No 26977 for Lot No 4271 in Johor Bahru ('the land') on 21 January 1994. Soon after becoming the registered proprietor of the land, the respondent found squatters living on the land. The respondent's solicitors issued notices of demand for vacant possession from the squatters. Upon the failure of the squatters to hand over vacant possession, the respondent took an action against the appellants under O. 89 of the Rules of the High Court 1980 ('the RHC') to remove them from the land. In the instant appeals, counsel for the respondents raised a preliminary objection as to the *locus standi* of the appellants and their counsel.

Held:
Per Mokhtar Sidin JCA

[1] Order 89 of the RHC provides a remedy for a land owner against a person or persons in unlawful occupation of his land. It also provides for special remedies against an illegal or unlawful occupier when he is unknown or his name is not known to the owner. The appellants were unnamed persons at the commencement of the actions in the High Court and the respondent had followed the correct procedure under O. 89. Furthermore, the actions were in accordance with form 8A.

[2] The status of any unnamed person is that he has no identity and no *locus standi* until he identifies himself and applies to the court either personally or through his solicitors to be joined as a defendant. Order 89 r. 5 of the

RHC provides that any person not named as a defendant who is in occupation of the land and wishes to be heard on the question whether an order for possession should be made may apply at any stage of the proceedings to be joined as a defendant. This is a specific provision and has to be complied with before a defendant can be given the opportunity to be heard. A proper application has to be made to the court and not merely by the insertion of a name as a party. The failure to do so will not give him the right to appear and be heard in court.

[3] There was no application by any of the unnamed appellants to be joined as a defendant under O. 89 r. 5 of the RHC or be made a party in accordance with O. 15 rr. 6 or 10. Therefore, there was no named defendant and as such no one could be heard as a defendant.

[Preliminary objection allowed; appeals dismissed with costs.]

*[**Bahasa Malaysia** Translation of Headnotes]*

PROSEDUR SIVIL: *Locus standi - Undang-undang tanah - Orang yang tidak dinamai menduduki tanah - Samada mesti memohon untuk dinamakan sebagai defendan*

Responden menjadi tuanpunya berdaftar tanah yang terdiri di bawah Geran No. 26977 bagi Lot 4271 di Johor Bahru ('tanah tersebut') pada 21 Januari 1994. Sejurus selepas menjadi tuanpunya berdaftar tanah itu, responden mendapati setinggan menduduki di atas tanah tersebut. Peguamcara responden telah mengeluarkan notis-notis tuntutan untuk milikan kosong daripada setinggan-setinggan tersebut. Atas kegagalan setinggan-setinggan itu menyerahkan milikan kosong, responden telah mengambil tindakan terhadap perayu di bawah A. 89 Kaedah-Kaedah Mahkamah Tinggi 1980 untuk mengeluarkan mereka daripada tanah tersebut. Aturan itu memperuntukkan satu remedi bagi seseorang tuanpunya tanah terhadap setinggan-setinggan yang menghuni tanahnya, samada idtentiti-identiti mereka diketahui atau pun tidak. Perayu-perayu kemudiannya merayu terhadap keputusan tersebut. Peguam bagi pihak responden kemudiannya membangkitkan suatu bantahan awal berhubung dengan *locus standi* perayu-perayu dan peguam mereka di rayuan-rayuan tersebut.

Diputuskan:
Oleh Mokhtar Sidin HMR

[1] Aturan 89 Kaedah-Kaedah Mahkamah Tinggi 1980 memperuntukkan satu remedi bagi tuanpunya tanah terhadap seseorang atau orang-orang yang menghuni secara salah di sisi undang-undang akan tanahnya. Ianya juga memperuntukkan remedi khas terhadap seseorang penghuni yang tak sah di sisi undang-undang atau yang haram bilamana ianya tidak dikenali atau

namanya tidak diketahui oleh tuanpunya tanah. Dalam kes ini di permulaan tindakan dalam Mahkamah Tinggi perayu-perayu merupakan orang-orang yang tidak bernama dan responden telah mengikuti prosedur yang betul di bawah A. 89. Lagipun tindakan-tindakan tersebut adalah menurut borang 8A.

[2] Status mana-mana orang yang tidak bernama adalah bahawa beliau tidak mempunyai identiti dan tiada *locus standi* sehingga dia mengenalpastikan dirinya dan memohon kepada mahkamah samada secara peribadi atau melalui peguamcaranya untuk disertakan sebagai defendan. Aturan 89 k. 5 memperuntukkan bahawa mana-mana orang yang tidak dinamakan sebagai defendan yang sedang menghuni tanah tersebut dan ingin didengar mengenai persoalan samada perintah untuk milikan seharusnya dibuat boleh memohon di mana-mana peringkat prosiding tersebut untuk disertakan sebagai seorang defendan. Ini merupakan peruntukan spesifik dan haruslah dipatuhi sebelum defendan boleh diberikan peluang untuk didengar. Satu permohonan yang sempurna haruslah dibuat kepada mahkamah dan bukan semata-mata dengan memasukkan nama sahaja sebagai satu pihak dan kegagalan berbuat demikian tidak akan memberinya hak untuk hadir dan didengar dalam mahkamah.

[3] Tidak terdapat apa-apa permohonan oleh mana-mana defendan yang tidak dinamakan untuk disertakan sebagai defendan di bawah A. 89 k. 5 atau dijadikan satu pihak menurut A. 15 kk. 6 atau 10, dengan itu tidak terdapat defendan yang dinamakan dan oleh yang demikian tidak terdapat sesiapa yang boleh didengar sebagai seorang defendan.

[Bantahan asal dibenarkan; rayuan-rayuan ditolak dengan kos.]

Legislation referred to:
Rules of the High Court 1980, O. 15 rr. 6, 10, O. 89 rr. 1, 5

Other source referred to:
Annual Supreme Court Practice 1997, paras 113/1–8/1

For the appellants - Datuk DJ Puthucheary (Sanjay Mohanasundaram & Douglas WL Yee with him); M/s Skrine & Co
For the respondent - RR Sethu (Ng Chew Hor & Chen Wai Jion with him); M/s WJ Chen & Co

JUDGMENT

Mokhtar Sidin JCA:

Counsel for the respondent raised a preliminary objection as to the *locus standi* of the appellants and their counsel when the three appeals were called. The three appeals involved are:

(i) Rayuan Sivil No. J-02-487-1995

(ii) Rayuan Sivil No. J-02-352-1996

(iii) Rayuan Sivil No. J-02-263-1996

The appellants in the first and third appeals described themselves as follows:

> Orang-orang yang menduduki rumah (sebahagian papan, sebahagian simen) dan setor-setor papan yang didirikan atas sebahagian tanah yang terkandung di bawah hakmilik Geran No. 26977 bagi Lot 4271 dalam Bandar Johor Bahru, Johor.

The appellants in the second appeal described themselves as follows:

> Orang-orang yang menduduki rumah papan yang didirikan atas sebahagian tanah yang terkandung di bawah Hakmilik Geran No. 26977 bagi Lot 4271 dalam Bandar Johor Bahru, Johor.

As can be seen from the caption of the appeals the titles of the appellants are given to be the occupiers of the said land. These titles followed the titles as described in the originating summons filed by the respondent. The respondent is one and the same in the three appeals and is the plaintiff in the originating summons.

For the convenience of all concerned in this judgment we will refer the appellants as the defendants and the respondent as the plaintiff.

The plaintiff is the registered owner of the land comprised under Grant No. 26977 for Lot No. 4271, in the township of Johor Bahru (hereinafter referred to as "the land"). The initial area of the land was 27 acres 0 rood 20 poles. The State Government had acquired approximately three acres of the land. The area of the land at the filing of the originating summons measured approximately 24 acres. The land was previously described or known as C.T. 2264 and before that as Malay Grant 1572. By a court order dated 22 January 1949 the land was vested in the Estate and Trust Agencies (1927) Limited as trustees for the Estate of Syed Hassan bin Ahmad Alattas. The Estate and Trust Agencies (1927) Limited remained the registered proprietor of the land until 13 January 1981 when they transferred the land to four trustees of the Estate

namely Syed Mohamed bin Idroos Alattas, Dato' Ungku Mohsin bin Mohamed, Syed Ali bin Mohamed Alattas and Syed Hussein bin Salim Alattas. On 6 May 1981 the land was again transferred and registered in the name of four new trustees of the Estate namely Syed Hussein bin Salim Alattas, Syed Salleh bin Abdul Rahman Alattas, Syed Abd. Kadir bin Mohd. Alattas and Syed Mohd. Zain Alattas. On 21 January 1994 the plaintiff became the registered proprietor of the land.

After becoming the registered proprietor of the land, the plaintiff visited the land and found houses had been erected on the land which were occupied by several individuals. They were there without the permission or the agreement of the plaintiff. Among the houses are those described in the present appeals. The occupiers of these houses are said to be squatters.

The plaintiff's solicitors issued notices of demand for vacant possession from the squatters. On their failure to hand over vacant possession the plaintiff took up the present action which is under O. 89 of the Rules of the High Court 1980. When the plaintiff took up the action they took advantage of the provisions of O. 89 r. 1 which states as follows:

> 1. Where a person claims possession of land which he alleges is occupied solely by a person or persons (not being a tenant or tenants holding over after the termination of the tenancy) who entered into or remained in occupation without his licence or consent or that of any predecessor in title of his, the proceedings may be brought by originating summons in accordance with the provisions of this Order.

Order 89 r. 1 is identical to O. 113 r. 1 of the English Rules. Paragraph 113/1–8/1 of the Annual Supreme Court Practice 1997 states:

> This Order does not provide a new remedy but rather a new procedure for the recovery of possession of land which is in wrongful occupation by trespassers. Its machinery is designed to overcome the appparent shortcomings of the present procedural law in two respects, namely,
>
> (a) by providing the procedure for claiming possession of land where not every wrongful occupier can reasonably be identified, the Order overcomes the question whether an order for possession of land can be made and enforced in *ex parte* proceedings in which no person is named as a defendant ... or only in proceedings in which at least one person is named as the defendant ... ; and
>
> (b) by shortening the steps and the time taken for obtaining a final order for possession of land, the Order overcomes the question whether such an order can be made on an interlocutory application or only by way of a final judgment or order ...

Further down the paragraph it states:

> The application of this Order is narrowly confined to the particular circumstances described in r. 1, ie, *to the claim for possession of land which is occupied solely by a person or persons who entered into or remain in occupation without the licence or consent of the person in possession or of any predecessor of his.* The exceptional machinery of this Order is plainly intended to remedy an exceptional mischief of a totally different dimension from that which can be remedied by a claim for the recovery of land by the ordinary procedure by writ followed by judgment in default or under O. 14. The Order applies where the occupier has entered into occupation without licence or consent; and this Order also applies to a person who has entered into possession of land with a licence but has remained in occupation without a licence, except perhaps where there has been the grant of a licence for a substantial period and the licensee holds over after the determination of the licence ...

As can be seen above, this Order provides a remedy for a land owner against a person or persons in unlawful occupation of his land. It also provides for special remedy against an illegal or unlawful occupier when he is unknown or his name is not known to the owner. An application under this Order could also be used against a person whose name is known.

In our view at the commencement of an action under O. 89 a defendant is described merely as "occupier of ..." especially when the occupier or his name is not known to the owner. That is the situation in the present appeals. The defendants are unnamed persons at the commencement of these actions in the High Court which in our view is the correct procedure under O. 89. The actions are in accordance with Form 8A. In the form there is a note stating "defendant (if any) whose name is known to the plaintiff". It follows from that as follows:

> To (CD and) every (other) person in occupation ...

The words "every (other) person in occupation" are for unknown persons or their names are not known to the owner. In our view the status of any unnamed person is indicative that he has no identity and as such has no *locus standi.* In order to gain the necessary *locus standi* an unnamed person must identify himself and may apply to the court either personally or by his solicitors by naming himself and to be joined as a defendant. This can be seen from the note at the bottom of the form where it states:

> Note – Any person occupying the premises who is not named as a defendant by this summons **may apply to the court personally or by counsel or solicitor to be joined as a defendant.** If a person occupying the premises does

not attend personally or by counsel or solicitor at the time and place above-mentioned, such order will be made as the court may think just and expedient.

Order 89 r. 5 provides as follows:

> 5. **Application by occupier to be made a party**
>
> Without prejudice to O. 15 rr. 6 and 10, *any person not named as a defendant who is in occupation of the land and wishes to be heard on the question whether an Order for possession should be made may apply at any stage of the proceedings to be joined as a defendant*.

From the above it is clear to us that an unnamed person has no *locus standi* until he identifies himself by name and applies to the court to be joined as a defendant. He could do so at any stage of the proceedings. Until he does so he is a non identity and he has no *locus standi*. In the Annual Supreme Court Practice 1997 at para 113/1–8/8 it is explained as follows:

> *Application by occupier to be joined as defendant – Any person who is in occupation of the land but who is not named as a defendant in the originating summons may apply at any stage of the proceedings to be joined as a defendant* (see r. 5). The right to make such application is without prejudice to O. 15 r. 6, or to the somewhat similar provisions of O. 15 r. 10, though neither of these rules is entirely approximate to the procedure under this Order. Under r. 5, all that the applicant needs to show is that he is in occupation of the land and that he "wishes to be heard on the question whether an order for possession should be made." (Emphasis is mine).

In our view it is clear that before any person could be heard he must identify himself and apply to become a party to the proceedings namely to be named and joined as a defendant. Though the word "may" is used in r. 5, in our view that is a specific provision to be complied with before he could be given the opportunity to be heard. In our view a proper application must be made to the court and not merely by insertion of name as a party. In our view the failure of any person to do so will not give him or his solicitors the right to appear and be heard by the court.

From the record of the present appeals it could be seen that there was no application by any of the unnamed defendants to be joined as defendant under O. 89 r. 5 or be made a party in accordance with O. 15 r. 6 or r. 10. In Appeal No. J-02-352-1996 one Ungku Aziz bin Mohamed entered appearance and filed several affidavits and in Appeal No. J-02-487-95 only an affidavit was filed by one Ng Eng Hing. There was no application by any of them in their personal capacity to be made a defendant to the action which should be the first step to be taken in order for them to be identified. As such there was no proper application by any of the occupiers to be made as an additional defendant by naming himself in accordance with O. 89 r. 5.

In our view since there is no application under O. 89 r. 5 or O. 15 r. 6 or r. 10 then there is no named defendant and as such no one could be heard as a defendant. In the three appeals we are of the opinion that the learned trial judge had erred when he heard counsel representing Ungku Aziz bin Mohamed and Ng Eng Hing when there was no proper application by either of them to be joined as a defendant.

When counsel for the respondent, Encik RR Sethu, took up the preliminary objection he had done so correctly. Encik Sethu raised his objection on the ground that when the Record of Appeal was filed the title had not been changed and the defendants remained as unnamed persons which in our view are anonymous. The names of Ungku Aziz and Ng Eng Hing purportedly to be represented by Datuk Dominic Puthucheary and his assistants did not appear as a party to the action anywhere in the Record of Appeal.

In our view both Ungku Aziz bin Mohamed and Ng Eng Hing never became a party to this proceedings in the court here or the court below. They have not ratified the error when they appealed to this court or when they filed their Record of Appeal. They could not do so now because there was no application by them to be named and be added as defendants to enable them to become parties to the action. They had the benefit of their solicitors' advice and as such they could not blame anyone else.

In our view the preliminary objection by Encik RR Sethu was well taken. Since the present appeals have no named defendant on record there are no appellants in the present appeals. As such in our view when Datuk Puthucheary announced that he was representing the appellants he had no *locus standi* to do so.

We allowed the preliminary objection by the respondent and dismissed the appellants' appeals with costs.

Reported by Bernadette Soosai